

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2142 of 1988

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge? : NO

KANTILAL VRIJLAL AMIN

Versus

DISTRICT EDUCATION OFFICER

Appearance:

MR AJ SHASTRI for Petitioner
MR RM DESAI for Respondent No. 1 & 2.
MR VM PANCHOLI AGP for Respondent No. 3.
Respondent No. 4 served.

CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 07/12/1999

ORAL JUDGEMENT

Heard the learned advocates for the parties.

By this petition under Article 226 of the
Constitution of India, the petitioner has challenged the
action of the respondent authorities in passing the
impugned order dated 15.4.1988 at Annexure "K" to the
petition whereby the pay of the petitioner was ordered to

be reduced and recovery was ordered to be made from the petitioner. The facts leading to the filing of the present petition, in short, are as under :

The petitioner was appointed as Junior Clerk in the pay scale of Rs. 55-3-85-4-125-5-130 in the Municipal School , Dehgam, Ahmedabad District on 26.11.1951. The petitioner worked as such in the said school upto 14th June, 1959 and thereafter, he was appointed as Senior Clerk in A.K.Vidya Mandir,Bavla, Ahmedabad District from 15th June, 1959 where he worked as such upto 11.6.1967 in the pay scale of Rs. 45-8-185-10-215 and subsequently, allocated in the revised pay scale, the scale of Rs. 185-10-245 pursuant to the recommendations made by the Sarela Pay Commission. Thereafter, from 27th June, 1967 to 8th June, 1968, the petitioner was appointed as Head Clerk in Rajasthan Hindi High School situated at Shahibaug, Ahmedabad in the pay scale of Rs. 250-12-310-15-400-20-420-20-480 and, thereafter, the petitioner was accommodated in the Talod High School as Senior Clerk from June 10, 1968 in the pay scale of Rs. 200-10-250-12-310-15-340 where he worked as such upto 1st September, 1969. Subsequently, the petitioner was appointed in Shreyas High School, Vadgam, Sabarkantha District from 17th November, 1969 in the same pay scale and he served in the said school upto 14th June, 1970. The petitioner was finally appointed as Head Clerk on 15th June, 1970 in Janata Hindi/Gujarati Higher Secondary Vidyalaya, Meghaninagar, Ahmedabad. The petitioner was appointed as Head Clerk in the pay scale of Rs. 250-480 and was subsequently accommodated as Senior Clerk as well as head clerk from time to time.

According to the petitioner, the respondents have upgraded the post of senior clerk with effect from 16th April, 1967 while the petitioner was working in AK Vidya Mandir, Bavla, Ahmedabad District. Said upgradation was made under special circumstances and the scale was fixed at Rs.150-10-200. Pursuant to the said order passed by the respondent, the post on which the petitioner was working in AK Vidya Mandir was also upgraded and the petitioner was placed in the pay scale of Rs. 150-200 under order at annexure "B" to the petition . Thereafter, in Rajasthan Hindi High School also, the petitioner was placed in the pay scale of Rs. 195-245 as per order dated 22.9.1972 at annexure "C" to the petition.

According to the petitioner , thereafter, on 18th September, 1972, the Government of Gujarat, in its Education and Labour Department issued a resolution

whereby the pay scales of non teaching staff working in the non government secondary schools were revised and the pay scale as above revised to Rs. 250-420 with effect from 1st June, 1967 and it was further directed in the said resolution that the same was to be fixed notionally. Under the said resolution, the Director of Education was directed to bring the said orders to the notice of the Managements of the Non Government Secondary Schools and to issue necessary instructions to the District Education Officers to see that the pay of the aforesaid staff is fixed by the management in those terms as early as possible.

According to the petitioner, thereafter, he had made an application before the first respondent for fixing his pay scale which was rejected on the ground that the matter was still under consideration before the Government. According to the petitioner, thereafter, on 31st January, 1974, the Government of Gujarat in its Education and Labour Department, issued another resolution whereby the Government has provided full protection and safeguards to those teachers under the Secondary Education Act with regard to their pay which might be affected by changing the school from time to time. According to the petitioner, in the said resolution, it has been stated that the same is applicable to the non teaching staff serving in the Non Government Secondary Schools. Thereafter, according to the petitioner, District Education Officer, respondent No.1 herein under order at annexure "E", directed the Principal, respondent No.3, Janta Hindi/Gujarati Higher Secondary Vidyalaya to place the petitioner in the pay scale of Rs. 250-480 with effect from 1.6.1967 and to pay the difference of salary occupied due to the said permission. Thereafter, pursuant to the recommendations made by the Desai Pay Commission, the salaries of non teaching staff were required to be fixed and therefore, respondent no. 3 has fixed the salary of the petitioner at Rs.620/-. The salary of the petitioner was fixed at Rs.620/- as per the copy of the service book at annexure "F". The petitioner submits that thereafter, the respondents sought to effect recovery from the salary of the petitioner which was subsequently postponed till further orders as per the order passed by the District Education Officer, respondent No.1 at annexure "G". Thereafter, pursuant to the representations made by the petitioner, the District Education Officer, after appreciating the letters and the resolutions of the Government, fixed the salary of the petitioner subject to certain conditions as per the order at annexure "H". Thereafter, as per the order at annexure "I", the respondent No.3 directed the Director of Education to fix

and protect the salary of the petitioner after considering the resolution dated 31st January, 1974 referred to hereinabove. Pursuant to the said direction given by the Office of the respondent No.4, the Director of Higher Education has fixed the salary of the petitioner by considering the aspect of number of students in the school at the relevant point of time. Thereafter, the petitioner had approached the respondent No. 4 to protect his pay as on 30th June,1979. At that time,the basic pay of the petitioner was Rs. 725.00 plus perks. Thereafter, the petitioner had made two to three representations for expediting the matter and to take appropriate decision in the matter but of no avail and, therefore, the petitioner approached the Secondary Education Tribunal by filing Application No. 166 of 1985. The Tribunal, under its judgment and order dated 6th November,1987, directed the petitioner to make a representation to the Director of Education for resolving his disputes. Accordingly, the petitioner approached the Director of Education. However, ultimately, his prayers were turned down by the Joint Director of Education for pay fixation by exercising the powers under Chapter I Sec.19(3) of the Grant in Aid Code,1964 as per the impugned order at Annexure "K". Under the said impugned order, the petitioner was directed to approach the Jr.Assistant Examiner of Pay Verification Unit for the purpose of fixation of his salary for his pay scale which is the final authority appointed by the Finance Department. Ultimately, the respondent No.3 came to the conclusion that the fixation of salary made by the Director of Education is not final one and there it has been directed to approach the Jt. Assistant Examiner of Pay Verification Unit. Alongwith the said direction, it was also directed by the respondent to recover the excess which has been paid to the petitioner byway of salary. While passing the impugned order,respondent No. 3 also directed to put the petitioner in lowest basic pay in the pay scale of Rs. 1400-2600 plus perks so that the question of recovery in future may not arise and only after the fixation is made by the Jt. Assistant Examiner, he should be paid his regular pay scale. Feeling aggrieved by the said order, the petitioner has approached this Court challenging the said order.

This Court, while admitting this petition, has issued notice as to interim relief on 2nd May, 1988. Thereafter, after hearing the parties on interim relief, following order was passed by this Court on June 23, 1988:

"Having heard the learned advocates for the parties on interim relief, the following order is passed:

There will be stay of operation of the directions contained in paragraph 5 of the impugned order at Annexure "K" for eight weeks from today. In the meantime, the petitioner should carry out the other conditions contained in the impugned order for getting recovery amount ascertained by approaching the competent authority as mentioned in paragraph 24 of the impugned order at Annexure "K". Mr. Shastri for the petitioner says that he would do the needful within two weeks from today. Thereafter, the competent authority shall finalize the computation of the amount of recovery within further period of four weeks. This matter will be placed for further orders about interim relief on 25th August, 1988. "

In this matter, the respondents have not filed any affidavit in reply controverting the averments made by the petitioner in the present petition.

Today, when the matter was taken up for final hearing, Ld. Advocate Mr. Shastri appearing for the petitioner has submitted before the Court that the it was decided in paragraph 5 of the impugned order at Annexure "K" dated 15th April, 1988 that from April, 1988, the petitioner shall be entitled to the pay scale of Rs. 1400-2600 in the post of head clerk with all consequential benefits and that in the said order, the respondent authorities has decided that the petitioner who was working as Head Clerk in the Janta Hindi/Gujarati Higher Secondary School Meghani Nagar, Ahmedabad is not entitled to the salary and pay fixation in the post of head clerk with effect from 1st January, 1973 because that is not in accordance with the Resolution of the Government. In paragraph 2 of the impugned order, the authority has further decided that the pay fixation of the petitioner is required to be examined and verified by the authority after considering necessary documents from the various schools where the petitioner was working and the service book of the petitioner is also required to be verified. The authority has also decided that whatever the excess amount has been paid to the petitioner shall also be required to be recovered from the petitioner and for effecting the recovery, the District Education Officer, Ahmedabad City was directed to pass necessary orders according to his discretion. In paragraph 5 of

the impugned order, the respondent authority has fixed the pay of the petitioner according to the 4th Pay Commission Recommendations. However, no specific order about recovery has been passed by the respondent authority against the petitioner. Therefore, according to Mr. Shastri, the learned advocate appearing for the petitioner, the petitioner has no serious objection as regards pay fixation of the petitioner pursuant to the impugned order at Annexure "K" dated 15th April, 1988 since the petitioner has already retired from service in the year 1988. However, Mr. Shastri has objected the recovery part from the salary of the petitioner. He has submitted that whatever fixation has been carried out by the authority has been received by the petitioner and for that, the petitioner cannot be said to be at fault. Mr. Shastri has relied on the decision of the apex court in case of Shyam Babu Varma and others versus Union of India and others reported in 1994 (2) SCC 521 in which it was held that the higher pay scale was given erroneously to the petitioner since 1973. Same came to be reduced in the year 1984. Since the petitioners received the higher pay scale due to no fault on their part, it shall be just and proper not to direct any recovery of excess amount already paid to them. Mr. Shastri has also relied on the decision of this court in case of SDM Basha versus Deputy IG of Police and others reported in 1993 (1) GLR 877. In the said decision, it was observed that the resolution or the administrative instructions should ordinarily be given some sort of publication. It is required to be made known to the persons who are sought to be affected thereby. Benefits could not be denied to the employees if the resolution controlling the benefits is not brought to the notice of the employees. He has also relied upon the decision reported in 1990 (2) GLR 1185. He has also relied on the decision of this court reported in 1991 (1) GLH UJ 19 wherein it was held that considering the doctrine of estoppel, teacher in the school having changed his position and suffered certain disadvantages as a result of particular stand of the Government cannot be called upon to face the consequences of the change in view taken by the Government. The respondents cannot be permitted to effect recovery and to revise the scale of the petitioner after a period of fifteen years particularly when the petitioner has changed his position as a result of the action of the respondent in treating payment of three increments is permissible under the Grant in Aid Code. The Government is estopped from changing the stand.

I have considered the submissions made by Mr. Shastri, the learned advocate for the petitioner as

also the submissions made by Mr. Pancholi, the learned A.G.P. for the respondent authorities. It is not in dispute that the salary of the petitioner was fixed by the respondent authorities from time to time by considering his position as senior clerk and the benefits of the pay scale of Senior Clerk were given to the petitioner by the respondent authorities. The salary was paid to the petitioner accordingly from 1967 to 15th April, 1988 when the impugned order came to be passed. After the lapse of about 11 years, the respondent authority has changed the view by order dated 15th April, 1988 and has reduced the salary of the petitioner and as a consequence thereof, it was directed that the recovery be made from the petitioner for the amount which has been paid in excess to the petitioner. Now, it is the submission of Mr. Shastri that the petitioner has been receiving the pay in the pay scale which was fixed by the respondent authorities from time to time and for such fixation, the petitioner cannot be said to be at fault. Therefore, in light of the fact that the petitioner has already retired in the year 1988, recovery for the past period should not be made from the petitioner.

I have considered the submissions made by the learned advocates for both the sides. I have also considered the averments made in the petition and the decisions cited by Mr. Shastri at the Bar. In the decision reported in 1994(2) SCC 521, the apex court has held that the petitioners of the said petition have received the scale of Rs. 330-560 since 1973 due to no fault of theirs and that scale is being reduced in the year 1984 with effect from January 1, 1973, it shall only be just and proper not to recover any excess amount which has already been paid to them.

Therefore, in this case also, scale of the petitioner has been fixed by order dated 15th April, 1988 by the respondent authorities by giving effect from 1st January, 1973 in the post of Head Clerk and decided that the petitioner is not entitled to the salary in the post of Head Clerk from 1st January, 1973 according to various Government Resolutions and request of the petitioner for protecting his pay was turned down by the respondent authorities. Therefore, in the facts and circumstances of the case and also considering the decisions of the Supreme Court cited at the Bar, I am of the opinion that the respondents herein should not be allowed to give retrospective effect to the impugned order dated 15th April, 1988 and the respondent authorities should not recover the amount which has already been paid to the

petitioner and that no steps should be taken by the respondents to recover or to adjust any excess amount paid to the petitioner due to the fault on the part of the respondent authorities.

In the aforesaid premises, following order is passed:

Petition is partly allowed. The respondent authorities are directed not to recover any excess amount which has already been paid to the petitioner and that no steps should be taken to recover the amount or to adjust the same which has already been paid to the petitioner. Rule is made absolute to the aforesaid extent with no order as to costs.

3.12.1999. (H.K.Rathod,J.)

Vyas